

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

DEFENDANTS IN ADVERSARY PROCEEDINGS
LISTED ON EXHIBIT 1 ATTACHED HERETO,

Defendants.

Adv. Pro. Nos. listed on Exhibit 1
Attached Hereto

**DECLARATION OF HOWARD L. SIMON IN SUPPORT OF THE TRUSTEE'S
OMNIBUS MOTION FOR LEAVE TO REPLEAD PURSUANT TO
FED. R. CIV. P. 15(a) AND COURT ORDER AUTHORIZING
LIMITED DISCOVERY PURSUANT TO FED. R. CIV. P. 26(d)(1)**

I, Howard L. Simon, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a member of the Bar of this Court and a partner with the law firm of Windels Marx Lane & Mittendorf, LLP (“Windels Marx”), which serves as special counsel to Irving H. Picard, as trustee (the “Trustee”) for the liquidation of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”), and the substantively consolidated estate of Bernard L. Madoff.

2. As special counsel to the Trustee, I have personal knowledge of the facts stated herein.

3. I make this declaration (“Declaration”) to provide relevant information in connection with the Trustee’s Omnibus Motion for Leave to Replead Pursuant to Fed. R. Civ. P. 15(a) and Court Order Authorizing Limited Discovery Pursuant to Fed. R. Civ. P. 26(d)(1) as to the adversary proceedings listed on Exhibit A hereto (the “Motion”). The Motion is being filed in conjunction with the Trustee’s main Omnibus Motion seeking the same relief, as filed by the Trustee’s counsel Baker & Hostetler LLP on August 28, 2014 (the “Main Motion”). For the sake of brevity, we have also filed a Joinder to the Trustee’s Memorandum of Law in Support of the Main Motion (the “Memorandum”).

4. On April 27, 2014 and July 6, 2014, the District Court issued decisions on the good faith defense under Bankruptcy Code (the “Code”) sections 548(c) and 550(b) in a SIPA liquidation¹ and the extraterritorial application of Code section 550(a)(2)² respectively.

5. Exhibit A, attached hereto, is a list of the adversary proceedings in which the Trustee seeks leave to replead the operative complaint and an order compelling discovery.

¹ *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Madoff Sec.)*, No. 12 Misc. 115 (JSR), 2014 WL 1651952 (S.D.N.Y. Apr. 27, 2014).

² *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Madoff Sec.)*, No. 12 Misc. 115 (JSR), 2014 WL 2998557 (S.D.N.Y. July 6, 2014).

6. Exhibit A-1, attached hereto, is a list of the specific adversary proceedings identified on Exhibit A for which the Trustee has received no productions of documents from any defendant.

7. Exhibit A-2, attached hereto, is a list of specific adversary proceedings identified on Exhibit A for which the Trustee has received at least one document production from a defendant.

8. Exhibit B, attached hereto, is a copy of the Proposed Limited Document Demands defining the scope and nature of the limited expedited discovery requested in the Trustee's Motion seeking an Order from this Court that directs compliance by the defendants in the adversary proceedings identified on Exhibit A.

9. The Trustee is not seeking deposition testimony at this time from any of the defendants in the adversary proceedings listed on Exhibit A. Rather, the narrowly tailored documents requested should be readily identifiable by these defendants.

10. No prior application or motion for similar relief has been made to this or any other court.

I declare under penalties of perjury that the foregoing is true and correct.

Executed on the 28th day of August, 2014 at New York, New York.

/s/ Howard L. Simon
Howard L. Simon